

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In Re: ) Case No. 19-30088  
PG&E AND PACIFIC GAS AND ) Chapter 11  
ELECTRIC COMPANY, )  
Debtors. ) San Francisco, California  
 ) Tuesday, May 10, 2022  
 ) 10:00 AM  
 )  
REORGANIZED DEBTORS' SEVENTY-  
NINTH OMNIBUS OBJECTION TO  
CLAIMS (BOOKS AND RECORDS  
CLAIMS) (CLAIM OF DAVID  
ADDINGTON, CLAIM NO. 3093)  
FILED BY PG&E CORPORATION  
[10673]  
  
PRE-TRIAL CONFERENCE RE  
REORGANIZED DEBTORS'  
OBJECTION TO PROOF OF CLAIM  
NO. 58562 FILED BY FULCRUM  
CREDIT PARTNERS LLC AS  
TRANSFeree OF TUSCAN RIDGE  
ASSOCIATES, LLC FILED BY PG&E  
CORPORATION [11288]  
(CONTINUED TO 5/17/22)  
  
PRE-TRIAL CONFERENCE RE  
MOTION FOR RELIEF FROM STAY  
FILED BY FULCRUM CREDIT  
PARTNERS LLC [11066]  
PRINTED (CONTINUED TO  
5/17/22)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

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APPEARANCES (All present by video or telephone):

For the Reorganized Debtors: THOMAS B. RUPP, ESQ.  
Keller Benvenuti Kim LLP  
650 California Street, Suite 1900  
San Francisco, CA 94108  
(415) 364-6798

Also Present: David Preston Addington,  
Claimant

Court Recorder: LORENA PARADA/ANKEY THOMAS  
United States Bankruptcy Court  
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San Francisco, CA 94102

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PG&E and Pacific Gas And Electric Company

1 SAN FRANCISCO, CALIFORNIA, TUESDAY, MAY 10, 2022, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session, the Honorable  
5 Dennis Montali presiding. Calling the matter of PG&E  
6 Corporation.

7 I'll bring in Mr. Addington.

8 THE COURT: All right. Good morning, Mr. Addington.

9 MR. ADDINGTON: Good morning.

10 THE COURT: And Mr. Rupp appearing.

11 Mr. Addington, can you state your appearance, please?

12 MR. ADDINGTON: Yes. One moment, if you would, Your  
13 Honor. I'm going to see if I can get my video camera to work.

14 THE COURT: Okay. Mr. Rupp, while he is doing that,  
15 you can state your appearance, please.

16 MR. RUPP: Good morning, Your Honor. Thomas Rupp of  
17 Keller Benvenutti Kim, on behalf of the reorganized debtors.

18 THE COURT: So I assume you've got the watch today,  
19 right? Mr. Rupp, you're going to make the argument?

20 MR. RUPP: Yeah.

21 THE COURT: Okay.

22 MR. RUPP: Yes, sir.

23 THE COURT: Okay. Let's see if Mr. Addington is going  
24 to join us here.

25 MR. ADDINGTON: Well, I can hear you, Your Honor.

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1 THE COURT: Right. Well, you're welcome -- I mean,  
2 you don't need to have the camera on. I'm happy to see you,  
3 and I'd like to -- and greet you personally. But if, for some  
4 reason, the camera is a problem, you can make your argument  
5 without it.

6 MR. ADDINGTON: Well, I'm happy to do so. I'm  
7 apologetic that it is not working properly, but I guess I --  
8 I'd like to blame staff, but --

9 THE COURT: Well, you've got one of your kids. Bring  
10 one of your kids, and they can always --

11 MR. ADDINGTON: I know. I wanted to get them to do  
12 that before they left for school.

13 Anyway, I'm not sure if it is going to work. As long  
14 as you can hear me, I can assure you, I'm dressed appropriately  
15 and ready to make my argument.

16 THE COURT: I'm not worried about your dress, and  
17 you're free to begin. And let me know what portion of your  
18 twenty minutes do you want to reserve?

19 MR. ADDINGTON: Well, I think I would like to reserve  
20 ten minutes --

21 THE COURT: Okay.

22 MR. ADDINGTON: -- for my response. So --

23 THE COURT: Okay. So go ahead and begin then, please.

24 MR. ADDINGTON: I'd like to just make clear that I'm a  
25 creditor in the PG&E bankruptcy case, as you know. And really

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1 that's all I'm asking of this Court is to ask the debtor to pay  
2 me what it's owed -- what I'm owed for that now 1,804 days that  
3 it has been on my property after the termination of the  
4 easement.

5 The debtor has, from the beginning, held that the  
6 easement cannot be terminated as a matter of law. Prior to  
7 this hearing and this motion, the folks from PG&E have actually  
8 provided me a couple of other sets of documents purporting to  
9 put forth the position that the easement is not terminatable as  
10 a matter of.

11 THE COURT: Well, are those documents in the record?

12 MR. ADDINGTON: No, sir. Those were before the  
13 bankruptcy case even occurred.

14 THE COURT: Well, I understand that, but for me to  
15 consider them, they must be in the record before the Court.

16 MR. ADDINGTON: No. Yes, sir; I understand that. I  
17 mention it only because I think -- not that it is relevant to  
18 the matter being heard today, but relevant to, sort of, I  
19 guess, my negative attitude toward this process and relevant to  
20 what I believe will be the next phases in the hearing.

21 THE COURT: So that's one of the questions I put to  
22 you. Let's take best case, worst case. Best case, I grant  
23 your motion.

24 MR. ADDINGTON: Well, sir, I don't have a motion.

25 THE COURT: Well, okay, I overrule the objection.

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1 MR. ADDINGTON: Yes, sir.

2 THE COURT: Under bankruptcy law, a claim filed is  
3 deemed allowed unless it's objected to. The company has  
4 objected to it, so it's at issue.

5 MR. ADDINGTON: Yes, sir.

6 THE COURT: If I were to overrule the objection, the  
7 claim would be deemed allowed. So what do you think happens  
8 next if your claim is no longer the subject of an objection?  
9 Leave aside the fact that, if I rule in your favor, PG&E has a  
10 right to appeal. That's not what we're talking about. So  
11 imagine that at the end of the hearing I say Mr. Addington is  
12 correct, PG&E is wrong; the objection to his claim is  
13 overruled. What is the next step you believe occurs in support  
14 of your claim, or you know, in --

15 MR. ADDINGTON: Your Honor, I would think it would be  
16 an evidentiary hearing where we would discuss two things, one,  
17 which I believe would be Mr. Rupp's desire to hear evidence  
18 regarding the actual termination and whether or not PG&E's  
19 conduct rose to the level that would trigger such termination.  
20 That would be an evidentiary matter. And then secondly, what  
21 do they owe me?

22 THE COURT: What that sounds like is that the claim  
23 isn't deemed allowed; it's still objected to.

24 MR. ADDINGTON: Well, I mean, I'm assuming once --  
25 again, I don't want to put words in Mr. Rupp's mouth, but given

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1 the fact that PG&E has, for five years, claimed it can't be  
2 done as a matter of law, and there's certainly no matter of  
3 law, will they then agree and go forth without any further  
4 objection? I doubt it. I wish they would. And for my  
5 purposes, I'd like an evidentiary hearing to get to what  
6 information is necessary to determine what might be owed for  
7 these --

8 THE COURT: So what would happen -- okay, now, let's  
9 assume that we're at that evidentiary hearing.

10 MR. ADDINGTON: Yes, sir.

11 THE COURT: And you what are you going to present?  
12 You have the burden of proof, so what are you going to prove?

13 MR. ADDINGTON: Well, sir, what I'm going to prove, as  
14 an evidentiary hearing, I assume I would have some opportunity  
15 to ask the debtor some questions.

16 THE COURT: What would you ask the debtor?

17 MR. ADDINGTON: I would ask the debtor how much power  
18 have they put through my property for these 1,804 days.

19 THE COURT: Yeah. And suppose they say four million  
20 dollars' worth?

21 MR. ADDINGTON: Then. Then I would go and look at  
22 both the law and other circumstances where someone has had a  
23 trespass on someone's property and made four million dollars.  
24 And from that I would determine here's what my claim reasonably  
25 is.

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1 THE COURT: Well, what if I determine that your claim  
2 reasonably is 25,000 dollars?

3 MR. ADDINGTON: Well, sir, that's your prerogative,  
4 and I'd say thank you very much.

5 THE COURT: No, Mr. Addington, it's not a question of  
6 prerogative. It's a question of what is the evidence. So  
7 let's frame the question differently. What if I determine that  
8 the lease -- excuse me -- the easement has not been terminated,  
9 then what happens next, in your mind?

10 MR. ADDINGTON: I think if the easement has not been  
11 terminated, then I guess I would ask the Court for an  
12 evidentiary hearing to show that PG&E has acted in such a way  
13 that the easement should be terminated.

14 THE COURT: Well, is it all or nothing? Your position  
15 is it's all or nothing, right? In other words, you believe  
16 that, based upon your reading of the 1909 (phonetic) document,  
17 that you had the right to do it, and therefore, what follows  
18 follows. And whether it's four million dollars or forty  
19 million, it's not forty thousand, and you believe that you have  
20 the right to take over the transmission of power?

21 MR. ADDINGTON: Yes, sir. And reading the easement  
22 document, it appears there is one remedy for the default of the  
23 debtor, PG&E. If they refuse to act reasonably regarding this  
24 easement, the easement itself says here's what happens.

25 THE COURT: So what did they do that was -- what did



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1 PG&E do that was unreasonable?

2 MR. ADDINGTON: Well, sir, I think that's the -- I'd  
3 be happy to answer. It's going to take way more than my twenty  
4 minutes.

5 THE COURT: But I need a summary, though. That's my  
6 point. My point is that one of the mysteries about this case  
7 is whether it really is all or nothing. And let's just  
8 assume -- and you've demonstrated tremendous effort and energy  
9 and capability and research, and I compliment you on all of  
10 that. But it --

11 MR. ADDINGTON: Thank you very much.

12 THE COURT: It still comes back to, kind of, is it  
13 really all or nothing? Is it really Mr. Addington can either  
14 have four million dollars or nothing? And what if I determine,  
15 for example, that the easement isn't affected, but maybe PG&E  
16 should have fixed your yard and flattened your property? In  
17 other words, what if I determine that maybe PG&E acted  
18 unreasonably, but the consequences aren't to lose a multi-  
19 million-dollar power transmission capability, or to forfeit it  
20 to you, but to compensate you, in some modest amount, money  
21 that's commensurate with what you suffered from. I mean, isn't  
22 that another alternative?

23 MR. ADDINGTON: Yes, sir. And as you well know, I'm  
24 not an attorney, and so I --

25 THE COURT: I actually didn't know that. I don't know

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1 whether you're an attorney or not, but --

2 MR. ADDINGTON: Oh, well, no, sir, I'm not an  
3 attorney. I dropped out after the first year.

4 THE COURT: Okay.

5 MR. ADDINGTON: And this is the first time I've made a  
6 presentation in a courtroom --

7 THE COURT: Okay.

8 MR. ADDINGTON: -- of any sort. So my understanding  
9 is that that the Court has the ability to rule inequity, which  
10 might be some sort of summary. But I haven't researched it; I  
11 don't know what would happen, sir.

12 THE COURT: But what if I told you that, based upon  
13 the evidence, maybe you've got a persuasive case for some  
14 compensation that you're entitled to, but it isn't all or  
15 nothing; it's 25,000 dollars, or 50,000 dollars, or 5,000  
16 dollars, or something else, because maybe, even though you  
17 signed the release, and one phase of the work was done, and you  
18 believe that PG&E didn't honor its obligation, they take a  
19 contrary view. That's a fair thing to have a debate about.

20 But we're back to the point about, well, even if PG&E  
21 acted unreasonably, is there a four-million-dollar consequence  
22 of that? And you seem to be conceding almost -- almost, in  
23 your comments, that maybe there is another alternative, and  
24 that is some kind of economic compensation to you, if the  
25 evidence shows that they were at fault and you were not.

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1 MR. ADDINGTON: Your Honor, I don't know what the law  
2 allows, but in reading the easement, my remedy is termination  
3 of the easement. And if PG&E were allowed back on my property,  
4 for any reason at any time, I would be very upset. I don't  
5 want them here. They've made themselves completely unwelcome  
6 by their actions, and the termination of the easement is the  
7 remedy, when they act unreasonably regarding one of its  
8 grantors.

9 THE COURT: Again, we're back -- Mr. Addington, I'm  
10 not trying to trap you here.

11 MR. ADDINGTON: Yes, sir.

12 THE COURT: Now you're back to the all or nothing.  
13 And so is a court to say, well, maybe PG&E should have come out  
14 with tractors and flattened the property, or maybe restored it  
15 for different uses, but since they didn't, therefore they  
16 should pay four million dollars? That's a question that's --  
17 you know, it's not easy to answer.

18 MR. ADDINGTON: Your Honor?

19 THE COURT: Why don't you go ahead and make whatever  
20 further argument you want.

21 MR. ADDINGTON: Yes, sir. First, I can understand why  
22 the Court would be hesitant to provide such a draconian -- or  
23 to enforce such a draconian outcome, given the evidence thus  
24 far in front of it. But I have not made a case for what  
25 behavior has resulted in the termination. I've only made an

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1 argument that the debtor -- there is no matter of law which  
2 precludes the termination of the easement. That's the only  
3 evidence I've made.

4 Within their motion to try to prove, as a matter of  
5 law, that these easement cannot be terminated, they continually  
6 referenced the fact that I had not provided evidence as to why  
7 the termination occurred, and that's why I gave you the  
8 declaration. I don't think it is necessary for the ruling  
9 today. I don't think their comments were necessary for the  
10 ruling today, but I felt they had to be addressed. I'd be  
11 happy to put on for you evidence as to why I believe their  
12 actions resulted in -- reasonably resulted in the termination.  
13 But having --

14 THE COURT: Mr. Addington, I'll go back to the  
15 question.

16 MR. ADDINGTON: Yes, sir.

17 THE COURT: What will that evidence be? You have to  
18 at least be able to tell me -- well, we're going around in  
19 circles here. Because first you say that, if you have your  
20 easement -- if the easement is terminated, you want an  
21 evidentiary hearing, but even if the easement hasn't been  
22 terminated, there should be an evidentiary hearing. So my  
23 question is, well, what are we going to do at this evidentiary  
24 hearing? What would you bring to evidence -- what evidence  
25 would you present to establish your entitlement to some

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1 compensation or some outcome?

2 MR. ADDINGTON: Well, as I understand it, sir, I think  
3 you're asking me two questions. One, what evidence would I  
4 bring to the Court that the termination of the easement was the  
5 right outcome, and secondly, what evidence would I bring as to  
6 what compensation should therefore be due? Those are --

7 THE COURT: To me, that's one question, not two. But  
8 I'll break it into parts.

9 MR. ADDINGTON: Yes.

10 THE COURT: So if the answer is they didn't do  
11 anything wrong, to the first question, then the answer to the  
12 second question is zero.

13 MR. ADDINGTON: That's correct.

14 THE COURT: So it really is one question, or two,  
15 depending upon the answer to the first question. But all  
16 right. Suppose I say, okay, they did something wrong. So  
17 that's question one.

18 MR. ADDINGTON: No, who --

19 THE COURT: Question two is, what is your damage? And  
20 if you're going to tell me, well, of course, my damage is  
21 multi-millions of dollars, then the question is, well, how did  
22 you get there? How does that happen?

23 MR. ADDINGTON: Well, sir, I'm not sitting here before  
24 you today to make any claim. I've made a guess as to what that  
25 might be, but if PG&E has used my property, in trespass, for

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1 five years, claiming the entire time that the easement cannot  
2 be terminated as a matter of law, when it clearly can, then I'd  
3 put to the Court they owe me something for that trespass.

4 THE COURT: Well, what if I said it can be terminated  
5 as a matter of law, under certain facts, but it hasn't yet been  
6 terminated. Therefore, then what happens?

7 MR. ADDINGTON: Well, I mean, you're asking me to make  
8 a number of assumptions as to what I'm missing in terms of  
9 getting it terminated. And I'd continue to make sure the  
10 termination was effective.

11 THE COURT: Okay. I'm going to let Mr. Rupp have his  
12 twenty minutes, Mr. Addington. And you listen to what he says,  
13 because I'm going to ask Mr. Rupp the same question, and then  
14 and then I'll let you finish the ten minutes that I reserved to  
15 you for you to respond to his response. That's very typical of  
16 the way we do it. So you've made your presentation -- first of  
17 all, I have read all the briefs, and I probably will read them  
18 again, and you've said what you said.

19 Mr. Rupp, why don't you take it from there? You have  
20 twenty minutes.

21 MR. RUPP: Thank you, Your Honor. Good morning.  
22 Thomas Rupp, of Keller Benvenutti Kim, for the reorganized  
23 debtors.

24 As the Court has said in prior status conferences, and  
25 as we've said in our papers, there is the one immediate and

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1 essential question that needs to be answered before we go any  
2 further here. And that is, did PG&E have an easement over Mr.  
3 Addington's property as of the petition date?

4 Mr. Addington believes he terminated the easement by  
5 giving notice to PG&E and then recording the notice of  
6 termination with the Alameda County recorder. Our position is  
7 that these actions alone were not sufficient to extinguish  
8 PG&E's title.

9 If we were to follow Mr. Addington's position, and the  
10 Court were to find that he is correct and the easement is  
11 terminated, according to Mr. Addington's prior demands, either  
12 PG&E would have to remove its property from Mr. Addington's  
13 residence, from his grounds, and either find some alternative  
14 way of operating its grid, either Mr. Addington's neighbors or  
15 otherwise.

16 THE COURT: And how many decades would it take to get  
17 PG&E to get permission to move power towers in Piedmont,  
18 California? You'd be retired by then.

19 MR. RUPP: Well, you know, that goes to the heart of  
20 this. That goes to the situation we're dealing with. Either  
21 that outcome, or as Mr. Addington has also indicated, PG&E  
22 could convey its title to its electrical equipment, and then we  
23 would have a grid where PG&E operates a power line, except for  
24 the brief span of two towers on Mr. Addington's property, or  
25 Mr. Addington operates his own, sort of, power company for a

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1 hundred feet, and then the electricity continues down on PG&E's  
2 lines. And so I think it's important to kind of keep that in  
3 mind of what the stakes are here if the Court were to find that  
4 the easement were validly terminated.

5 I think it's important to revisit the language here.  
6 The termination clause of the easement reads: "Any violation  
7 of the conditions of this grant shall terminate and extinguish  
8 the easement hereby granted."

9 And as this Court observed, back nearly a year ago,  
10 who makes this decision? In whose hands is this? Who executes  
11 this? If it were, as Mr. Addington believes, that it were in  
12 his mind to decide whether the conditions had been violated and  
13 termination was proper, and he could affect it by himself, we  
14 do not believe this language supports that.

15 We think, if that were intended to be the case, when  
16 the original grantor and grantee were working out the grant,  
17 they could have specified that. They could have drafted  
18 language to say, you know, in the sole opinion of the grantor  
19 or its successors, it may terminate, et cetera, et cetera.

20 But that's not what it says. And if we read more into  
21 the terms of the easement, we find that there's the section Mr.  
22 Addington refers to about -- let me make sure I have it -- "and  
23 if said party of the second part, in this case, PG&E, in the  
24 enjoyment of the rights hereby granted, shall avoid, so far as  
25 it reasonably can, interfering with the use by the party of the



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1 first part, in this case Mr. Addington, said strip of land for  
2 any and all purposes". And as this Court knows, that "so far  
3 as it reasonably can" language is up to a finder of fact to  
4 decide what is reasonable.

5 And that's before we look back and say, well, what are  
6 PG&E's rights to this easement? "PG&E has the right to erect  
7 and maintain two lines of field towers for the purpose of  
8 suspending and stringing wires thereon, supported thereby for  
9 the transmission and distribution of electricity."

10 So were Mr. Addington to seek to have this easement  
11 terminated, were he to have done so at the time he claims that  
12 he terminated the easement, it would have been incumbent on him  
13 to seek that relief through a court of competent jurisdiction,  
14 because the language of the easement itself does not grant Mr.  
15 Addington this power, in of himself, to effectuate the  
16 termination.

17 What we have is a problem. We have the balancing of  
18 rights. We have the balancing of PG&E's rights to operate its  
19 power lines, and maintain them, and do everything necessary to  
20 keep them in good working order. And we have Mr. Addington's  
21 rights, which are the residual rights to enjoy his property.  
22 And that's where the easement leaves us. And that's what the  
23 case law supports is that a finder of fact has to look at the  
24 facts, look at the situation on the ground and say what is  
25 happening here.

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1 And furthermore, what we also have is the -- pardon  
2 me -- we have the law regarding conditions involving a  
3 forfeiture, where, you know, taken from California Civil Code  
4 Section 1442, and the cases interpreting it, including some  
5 concerning easements, a condition involving a forfeiture must  
6 be strictly interpreted against the party for whose benefit it  
7 is created.

8 In this case, the forfeiture would benefit the grantor  
9 and its successors, such as Mr. Addington, in this instance.  
10 So in considering these facts and considering the law, any  
11 court to rule on this, and to rule on this issue, would have to  
12 strictly interpret the condition against Mr. Addington. And it  
13 would have to look at PG&E's rights and what PG&E has done, and  
14 compare it to what Mr. Addington claims he is being denied from  
15 enjoying on his property, and make that determination.

16 THE COURT: Okay. So what happens if I agree with you  
17 that, say, there's never been a termination, what's next?

18 MR. RUPP: What's next is I believe that's the end of  
19 it. I believe the Court can enter an order making that finding  
20 and disallowing Mr. Addington's claim in its entirety. I  
21 believe that that's the end of it.

22 THE COURT: He has no recourse after that? Well,  
23 okay, let's try a different question. What were his rights  
24 back in -- I forgot the actual date. Instead of recording the  
25 termination, would he have a right to have gone to court and

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1 sue, at least in the alternative, for either a right to  
2 terminate or a right for damages?

3 MR. RUPP: I believe so.

4 THE COURT: And --

5 MR. RUPP: I believe --

6 THE COURT: And he doesn't have that right anymore?

7 MR. RUPP: Well, what we're dealing with here, Your  
8 Honor, is his bankruptcy claim. I don't think he has that  
9 right retroactively. I think, for the purposes of what we're  
10 dealing with, is his claim, which is outlined as saying Mr.  
11 Addington terminated the easement, that is a fact. And since  
12 that date in 2017, he believes that he's entitled to charge  
13 PG&E for the power it has transmitted.

14 THE COURT: Okay. But let's break that down. So  
15 let's say I agree with you and say that there was no  
16 termination in 2017. We know there was a bankruptcy in 2019.  
17 And since then, Mr. Addington has been precluded from filing a  
18 suit in court, at least to recover damages, but he's been  
19 allowed to file a claim.

20 Couldn't he amend his claim to prove damages and  
21 have -- as he said, have an evidentiary hearing on whether he  
22 has suffered damages of some amount? Using my hypothetical,  
23 what if it's some modest amount, does he have -- do you believe  
24 he's precluded from doing that now?

25 MR. RUPP: Your Honor, theoretically, anyone can file

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1 an amended claim at any time. However, I think that, given the  
2 way this has transpired, and given the way that Mr. Addington  
3 has always held his position to be based on this termination of  
4 easement, and that he's entitled to millions of dollars from  
5 PG&E, that -- we have dealt over the last year with a very  
6 different situation then if Mr. Addington had asserted a claim  
7 that was more a breach-of-contract claim or a tort claim  
8 entitled to a modest amount of damages. This would have all  
9 transpired very differently. So I would argue that PG&E would  
10 be prejudiced were Mr. Addington to amend his claim.

11 THE COURT: Why would it have transpired differently  
12 if he had said, you violated the easement, I'm entitled to the  
13 reasonable cost of the value, and as the time goes on, you  
14 continue to transmit power, therefore, the claim continues to  
15 go up, but in the alternative, I'm entitled to my damages,  
16 whatever it is.

17 I mean, are you really saying that that I can say you  
18 get one shot; you drew a line in the sand that said, damn it, I  
19 terminated that easement, therefore the clock is running at  
20 gazillions of dollars a year because of power, period. Or  
21 alternatively, if I say PG&E was in the wrong, but the  
22 consequences are not as drastic as Mr. Addington would have,  
23 and maybe PG&E should pay some reasonable cost to restore the  
24 condition that he believes was not restored. I mean, it almost  
25 turns to this dispute between the company and Mr. Addington has

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1 nothing to do with the easement. It has to do with the land  
2 that PG&E left not completely restored to Mr. Addington's  
3 satisfaction.

4 MR. RUPP: Well, Your Honor, again, I would point back  
5 to the release that was in the joint statement of facts  
6 where --

7 THE COURT: No, I understand that, but he concedes  
8 that. He concedes that. He said the problem happened after  
9 that. The easement wasn't terminated until after that, right?

10 MR. RUPP: Correct. It was --

11 THE COURT: So they --

12 MR. RUPP: -- terminated a month later.

13 THE COURT: They came in, they said, you got this, we  
14 did this, we did that, there was an exchange of money to Mr.  
15 Addington, he wasn't satisfied, PG&E paid him another 13,000  
16 dollars and got him to sign a release. Then after that, the  
17 easement got recorded and Mr. Addington took the position he  
18 took.

19 But he -- I believe, and Mr. Addington can tell me if  
20 I'm wrong -- I believe he wouldn't have had a basis to record  
21 that easement if PG&E had finished what he believes it had  
22 committed to do. And to this day, he believes that PG&E didn't  
23 finish what it committed to do, and Mr. Addington believes the  
24 consequences are as we've discussed.

25 But to me, there's another alternative; it's for the

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1 trier of fact to determine who was right: was PG&E right or  
2 Addington right? If PG&E was right, nothing else had to  
3 happen, we're done. If Mr. Addington was right, PG&E should  
4 have finished the work, and therefore it's some measurable  
5 amount of money that -- easily fixed. Again, I'm not making  
6 light of PG&E's money, but it's a heck of a lot easier to write  
7 a check for 40,000 dollars than to replace two giant towers in  
8 Piedmont, California.

9 So I guess I want you to -- if you really believe that  
10 there is no in between, and there's no day in court on the  
11 question of what is the actual damages that he suffered, then  
12 say it. I find it, frankly, surprising that that's your view.  
13 But if that's your view, then tell me.

14 MR. RUPP: Your Honor, again, I appreciate what the  
15 Court is trying to do here; I really do. I can only defend  
16 against or object to the claim as it's presented to me and to  
17 this case. And what the claim I had was regarding the  
18 termination of an easement. In the proof of claim itself  
19 there's no factual background, and it's been drawn out of Mr.  
20 Addington, you know, with --

21 (Recorded message playing in background.)

22 THE COURT: I'm sorry. I can't turn that phone off.  
23 It'll stop in just a minute.

24 MR. ADDINGTON: That's okay.

25 THE COURT: That phone always rings when I'm on a Zoom

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1 call. Okay. Go ahead.

2 MR. RUPP: Sure. I think it's a matter of if Mr.  
3 Addington is amending his claim and is willing to amend it to I  
4 have not terminated -- amend it to say he has not terminated  
5 the easement, he is not entitled to these royalties or access  
6 charges, and instead, this is just a construction dispute,  
7 essentially, or a dispute over what PG&E is or is not allowing  
8 Mr. Addington to do with his grounds, we'll have to look at  
9 that claim and assess it. But right now, I just don't have it  
10 in front of me. I can't really consider that claim --

11 THE COURT: What's crazy about -- well, not crazy  
12 about -- that's the wrong word. But what's remarkable about  
13 your statement is you know as much as I know, and Mr. Addington  
14 has repeatedly stated the situation that he's unhappy with.  
15 And so to say that you don't know is really not -- it can't be  
16 right, because even though you and I weren't there -- this is  
17 Mr. Addington's home; he was there -- some PG&E people were  
18 there. They saw what happened. They saw what the condition of  
19 the land beneath the towers was when the PG&E -- the last PG&E  
20 truck left. Somebody knew the condition. And somebody on your  
21 side could have said I think we've got to fix that some more,  
22 or could have said, no, that we're done, we've done all we're  
23 supposed to do.

24 And Mr. Addington could have said that's not good  
25 enough; I think the following should be done. But so then Mr.

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1 Addington resorted to a remedy that he thought was appropriate,  
2 and he recorded something that maybe he had no ability -- no  
3 legal ability to do. But here we are fighting over something  
4 that's almost bizarre to think about it, in this day and age,  
5 to start to think about what one individual, in one single  
6 family residence, does if there are two giant towers crossing  
7 his property that transfer electricity, in the millions of  
8 dollars of value per year, and therefore the consequences are  
9 all or nothing. It just -- it doesn't make sense.

10 And yet PG&E is in bankruptcy, and we have liberal  
11 rules of pleading, and it's hard for me to imagine that, if I  
12 say there is no claim for a termination of easement, but there  
13 is an entitlement to prove up damages, that I could say to Mr.  
14 Addington, I'll give you a date for you to prove what actual  
15 damages you suffered, and if they are so severe that the  
16 consequences may be the termination was proper, or no, that  
17 termination was not necessary, you could have been compensated  
18 for X dollars, there's a simple solution. This is a solution  
19 that's waiting for somebody to just apply it to make it work.

20 So you don't have to answer my point, Mr. Rupp. You  
21 made your position clear. And I guess if I agree with you as  
22 to the outcome, I can say to Mr. Addington, your claim for four  
23 million dollars is disallowed, because you didn't terminate,  
24 but you can assert damages, if you have a basis to do so, and  
25 PG&E will have an opportunity to oppose it.



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1           Anyway, go ahead. I'm using up the last of your time,  
2           so use a couple more minutes.

3           MR. RUPP: That's okay, Your Honor. I appreciate the  
4           Court's comments, and I appreciate the search for a reasonable  
5           solution here, because we agree it -- we are in a strange  
6           position. And as we spoke at the beginning of my presentation,  
7           what are the outcomes if the easement is terminated? It's not  
8           in anyone's best interest.

9           So I'm here, first and foremost, and our briefing was  
10          here, first and foremost, to defend PG&E's easement and defend  
11          its title to the easement. And at the time, based on Mr.  
12          Addington's current claim, we believe that that disposes of the  
13          claim, since it's based on the easement.

14          If, as you noted, the liberal Ninth Circuit rules  
15          regarding amendment of a claim, if the claim is amended such  
16          that it's a more garden variety construction type claim, and we  
17          can approach it that way, in that fashion, then without saying  
18          we'll agree to Mr. Addington amending the claim -- I'll have to  
19          speak with my client about that -- but that does change the  
20          complexion of the issue.

21          As you didn't want to belittle PG&E's money and paying  
22          for claims -- we've paid for many claims in this case -- but  
23          that easement is really what is sacred to us. And so that's  
24          why we have to bring such a vigorous defense on it.

25          THE COURT: Okay. Mr. Addington, now you've got ten

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1 minutes, and so focus, if you will, on the question of what do  
2 you realistically think you can do and will do, your options,  
3 if I declare that, as a matter of law, you have not terminated  
4 the easement, and therefore here we are. What do you think you  
5 want to do and could do next?

6 MR. ADDINGTON: Well, sir, first, I think I have to  
7 address Mr. Rupp's position that the termination of the  
8 easement would mean I'm going to take down the towers and cause  
9 a blackout in, you know --

10 THE COURT: No, no, you don't have to answer that.  
11 You don't have to answer that. What are you going to --

12 MR. ADDINGTON: May I --

13 THE COURT: His point is, you couldn't terminate the  
14 easement -- you haven't -- you haven't terminated the easement.

15 MR. ADDINGTON: Sir, I think, to make that ruling,  
16 without hearing any evidence as to what transpired, would be  
17 premature. The hearing today is: is this termination barred  
18 as a matter of law? And I think you can rule easily it is not  
19 barred as a matter of law, which is what PG&E's position has  
20 been these last five years.

21 And this is what goes to the heart of the matter.  
22 Their position regarding matter of law is unreasonable. Their  
23 actions on my property were unreasonable. For you to rule  
24 that, okay, you're going to make them be reasonable, it may  
25 require an act of God. They don't act reasonably, and that's

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1 the problem. So --

2 THE COURT: Okay. Mr. Addington, I'm going to  
3 interrupt you again. Let's go back to the day after you signed  
4 the release --

5 MR. ADDINGTON: Yes, Your Honor.

6 THE COURT: -- and the day before you recorded the  
7 easement, okay? So we're back at that point in time. And of  
8 the three of us, you were the only one that was really there.  
9 So you're there, and you've just signed the release for the  
10 forty-some-odd thousand, whatever the document was.

11 MR. ADDINGTON: Yes, sir.

12 THE COURT: What was the situation on the ground then  
13 that you believe PG&E should have taken care of and fixed?

14 MR. ADDINGTON: No, sir. There was no situation on  
15 the ground that I wanted PG&E to fix. I was going to fix it.  
16 I can fix it. I can fix it quicker. And --

17 THE COURT: Okay. What was the situation you want to  
18 be fixed, regardless of who fixes it?

19 MR. ADDINGTON: I wanted my yard to be leveled so I  
20 could put in sod and a sprinkler system.

21 THE COURT: Okay. And you haven't done it to this  
22 day, is that right?

23 MR. ADDINGTON: No, sir. The yard is contoured with  
24 such angles, such steep angles, recontoured by PG&E, that it  
25 will not hold sod.

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1 THE COURT: Okay. So we're back to there. You're  
2 standing on the ground. The yard isn't leveled. You believe  
3 PG&E had a responsibility to level it. It didn't. You would  
4 go level it yourself. What would you do to level it, and what  
5 would it take?

6 MR. ADDINGTON: Well, sir, that was the question I put  
7 to PG&E. I'd like --

8 THE COURT: No, I'm putting it to you now.

9 MR. ADDINGTON: Yes, sir. I understand. So what it  
10 would take, according to PG&E, is an engineered report, even to  
11 return my yard to its prior condition.

12 THE COURT: What would it take, according to Mr.  
13 Addington?

14 MR. ADDINGTON: Oh, in terms of costs?

15 THE COURT: Yes.

16 MR. ADDINGTON: I don't know, 100,000 dollars, maybe.

17 THE COURT: Okay. So we're back -- now let's change  
18 the stick with the hypothetical. The hypothetical is I'm there  
19 with you.

20 MR. ADDINGTON: Yes, sir.

21 THE COURT: And I'm standing there on your property on  
22 St. James Drive. And I look at those towers and I say, wow,  
23 look at that. And I look at this yard that isn't leveled. And  
24 I say to you, what do you want? And you say, I want it fixed.  
25 And I say, okay, how are you going to fix it? And you say,

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1 well, I'm going to hire a third-party contractor to come in and  
2 do it, and it's going to cost me 100,000 dollars. And I'd say,  
3 okay, then do it, and sue PG&E for 100,000 dollars.

4 But instead, I wasn't there, and you decided I'm going  
5 to go terminate the easement. And so now we're here in 2022,  
6 and I'm saying, why is terminating an easement the proper  
7 remedy for something that could have been fixed for 100,000  
8 dollars?

9 MR. ADDINGTON: Because it couldn't have been fixed  
10 for 100,000 dollars.

11 THE COURT: You just said it would have been.

12 MR. ADDINGTON: No, sir, with PG&E's acquiescence.

13 THE COURT: Well, no, I'm talking about you're in  
14 court. You're in superior court in Alameda County, and the  
15 judge says, PG&E, you should have leveled the property; I find  
16 from the evidence that Mr. Addington is entitled to 100,000  
17 dollars, and Mr. Addington, go level the property; here is your  
18 100,000 dollars. Why wouldn't that -- what's wrong with that  
19 outcome?

20 MR. ADDINGTON: Because PG&E, after doing the work,  
21 and before termination of the easement, produced a report  
22 saying that the new contours were sacrosanct and would require  
23 an engineer report, with their approval, even to return the  
24 yard to his prior condition, even though PG&E did not have an  
25 engineered report in order to change the levels of the yard.

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1 THE COURT: But you just told me that you believe in  
2 2017 you could have, for 100,000 dollars, put the property in a  
3 position for you and your family to enjoy it the way you expect  
4 it and were entitled to, correct?

5 MR. ADDINGTON: Yes.

6 THE COURT: That's what you said?

7 MR. ADDINGTON: Yes, sir. But I was told by PG&E I  
8 could not --

9 THE COURT: No, don't say that again. Don't say that  
10 again. What I'm trying to tell you is, if we had not -- there  
11 had not been a bankruptcy, and we'd been at the Superior Court,  
12 and I was a Superior Court judge, and I'd say, well, okay, Mr.  
13 Addington, you believe you can put the property in proper  
14 position for 100,000 dollars. And then I'd say to PG&E, well,  
15 what's your position? And then I'd make a ruling.

16 And if I had then determined that PG&E was at fault,  
17 legally at fault, I'd say, PG&E, you will have to pay Mr.  
18 Addington 100,000 dollars in damages, period, end of story. Or  
19 I would have said, Mr. Addington, you are wrong, PG&E is  
20 correct, you can do whatever you want with your property, but  
21 you can't make PG&E pay for it. And --

22 MR. ADDINGTON: Sir?

23 THE COURT: Or you can't do something that infringes  
24 upon PG&E's rights as an easement holder. But here we are,  
25 four years later -- five years later, arguing about millions of

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1 dollars that have no -- don't appear to have any relationship  
2 to the harm that you believe PG&E should pay for.

3 MR. ADDINGTON: Sir, my claim in bankruptcy court is  
4 subject to a standard of reasonableness. I don't care what I'm  
5 paid. What I care about is I have to have PG&E out of my yard.  
6 I'm happy to give the tower and the lines to CASIO for their  
7 administration.

8 THE COURT: Mr. Addington, we're wasting our time.  
9 You bought --

10 MR. ADDINGTON: I'm sorry.

11 THE COURT: You bought the property in 2016, as I  
12 recall --

13 MR. ADDINGTON: Yes, sir.

14 THE COURT: -- with those two towers on the lands.

15 MR. ADDINGTON: I love the towers. Yes, sir.

16 THE COURT: And that is something that you have to  
17 accept the consequences. It's a beautiful -- I happen to know  
18 the area. I don't know your lot, but I used to -- my family  
19 lived in Piedmont in the past. I've been past that many times,  
20 and it's a beautiful property. But it has two towers on it, so  
21 that's a tradeoff. And --

22 MR. ADDINGTON: Sir, I love the towers. I would  
23 never -- even if PG&E took down its lines, I would like to keep  
24 the towers.

25 THE COURT: So the point is that you cannot make PG&E

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1 go away unless somehow the easement is terminated. And so my  
2 point is that that's on your wish list, but it simply stays on  
3 your wish list. I can't make PG&E go away in the way you would  
4 like them to.

5 And the question is whether PG&E has legal  
6 responsibility that can translate to dollars to make you whole,  
7 versus it doesn't have any legal responsibility, and you'll  
8 have to decide what you want to do one way or the other.

9 So let me put this to bed for now. I am not prepared  
10 to say -- or I am prepared -- excuse me; I'll state that in a  
11 positive sense. I agree with Mr. Rupp and PG&E, the easement  
12 has not been terminated. Under the law cited by Mr. Rupp, the  
13 combination of the forfeiture plus a reasonable reading of the  
14 documents, I don't know what the situation -- never mind what  
15 the situation was, we were presented with two versions of  
16 something that was recorded before any of us were around. And  
17 that's what you're staking your case on. And I do not believe,  
18 as a matter of law, that you have effectively terminated the  
19 easement.

20 I'm prepared, however, to give you an opportunity to  
21 at least articulate something that is a measure of damages that  
22 you believe you're entitled to, based upon what you think PG&E  
23 should have done since it last terminated its contractual  
24 relationship with you. In other words, go back to my  
25 hypothetical, or not so hypothetical, my -- go back to the day



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1 you signed the release, and they paid you the last installment  
2 of the money that they paid you, and on that date and time, and  
3 since then, is there something that PG&E is responsible for  
4 that it has not compensated you for?

5 If you can demonstrate that there is something, again,  
6 using the hypothetical that you put, the 100,000. I'm not  
7 trapping you -- I'm not locking you into 100,000, but it's the  
8 concept. If they could have paid you 100,000 dollars to  
9 satisfy you then, maybe they could pay you some different  
10 amount now to compensate you for the running of time. Or maybe  
11 it's a lesser amount.

12 And I'm going to give you -- I'm going to issue an  
13 order that determines that your claim for the multi-million  
14 dollars is disallowed because there has not been an effective  
15 termination of an easement. But under what we'll call the  
16 liberal rules of pleading, you can amend your claim to set  
17 forth a theory by which you believe PG&E does have an  
18 obligation to compensate you for something that makes you whole  
19 and expresses that claim in a dollar amount. I'm going to then  
20 give PG&E an opportunity to respond, and if necessary, we'll  
21 have an evidentiary hearing.

22 There's another alternative, and that is to explore a  
23 consensual resolution. Mr. Rupp has known me in this position  
24 for a couple of years, and there have been a number of cases  
25 where claimants have asserted amounts of money they believe

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1 they're entitled to, and PG&E and those claimants have come to  
2 a consensual resolution, in other words, an out-of-court  
3 settlement. And if you are inclined and PG&E is inclined to  
4 reach an out-of-court settlement that's expressed in dollars,  
5 that's the best result, from my point of view. If you are  
6 unable to reach that point, then my job is to make a ruling on  
7 the facts.

8 So, Mr. Addington, what I'm going to give you is I'm  
9 going to give you a deadline to amend your claim -- amend the  
10 claim to assert money damages. And I'm going to give Mr. Rupp  
11 an opportunity to respond to that amended claim. And I'm going  
12 to give both sides an opportunity to settle this case on their  
13 own, either with a court mediator, or if not, through a  
14 traditional hearing to discuss what is Mr. Addington's damages  
15 and has he proved PG&E's liability for it, and PG&E's defenses.

16 So what's going to happen then, Mr. Addington, I'm  
17 going to issue an order -- I'll issue it. And the order is  
18 going to be a little bit boilerplate. It's going to say, for  
19 the reasons stated on the record -- and I'm referring to  
20 today's hearing -- I'm going to say something in words like,  
21 Mr. Addington's attempt to terminate the easement in 2017 was  
22 ineffective. The easement has not been terminated. The claim  
23 is disallowed as filed. However, Mr. Addington has blank  
24 days -- and I'm probably going to put in 60 days -- to amend  
25 the claim.

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1           Then Mr. Addington will have that running of time.  
2           The time will start from the time of my order. Everything keys  
3           on an order, not what I'm saying today. So if you don't like  
4           my result, and you wish to take an appeal, you're entitled to  
5           do that. If you accept that result, that'll start the clock  
6           running, and you'll have sixty days to amend the claim. And  
7           you'd simply amend the document you filed that says I'm  
8           amending my claim to say, based upon the events of 2017,  
9           whatever it was, I'm entitled -- I claim X dollars.

10           And PG&E will have thirty days to respond. I'm just  
11           making up my rules here. Thirty days -- sixty days to amend  
12           claim, thirty days for PG&E to respond. And I'm going to have  
13           a continued hearing in about four months from now. So I'm  
14           inviting you, Mr. --

15           MR. RUPP: Your Honor?

16           THE COURT: I'm inviting you, Mr. Addington, to --  
17           just a second -- you, Mr. Addington, to amend the claim, and  
18           for PG&E and you to discuss trying to get it resolved, and a  
19           further hearing out in about four months, if there's no  
20           resolution.

21           Yes, sir. Mr. Rupp?

22           MR. RUPP: Your Honor, can I just ask the Court that  
23           that period for PG&E's response be sixty days instead of  
24           thirty?

25           THE COURT: That's all right, yep.

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1 MR. RUPP: And is the response to be in the form of an  
2 objection to the claim?

3 THE COURT: Yeah, I think so.

4 MR. RUPP: Starting fresh?

5 THE COURT: I mean, procedurally, that's what we have  
6 to do. And, PG&E has all the defenses. I mean, whatever  
7 defense you have. I'm not asking you to give up anything  
8 either. We're breaking this into parts. Mr. Addington --

9 MR. RUPP: Okay.

10 THE COURT: Mr. Addington would have preferred to have  
11 a determination in his favor that the termination of the  
12 easement was effective, than to prove up his claims, and I'm  
13 disagreeing with him and saying the termination was not  
14 effective.

15 And I'm generally accepting the arguments you've made  
16 in your papers, Mr. Rupp: forfeiture, unilateral conduct,  
17 interpretation of the document, not reasonable, construing it  
18 more narrowly against the person who is asserting the right.  
19 And that that will be a court order.

20 And Mr. Addington, then again, assuming I sign the  
21 order, let's say, next week, May 13th, and you'll have sixty  
22 days from May 13th to amend your claim. If you don't amend  
23 your claim, you're out. If you do amend your claim, I'm not  
24 telling you how much it should be or how it should be worded.  
25 You might consider consulting counsel to help you, but that's

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1 your choice.

2 But the point is, it will be a dollar claim for what  
3 you claim that PG&E is entitled because of its conduct previous  
4 to now, previous to the bankruptcy. And then PG&E has sixty  
5 days to respond. So that takes us out about four months. I'll  
6 have a hearing in about five months.

7 And again, the best result, from my point of view, is  
8 that you see if there can be a consensual resolution. The  
9 company, Mr. Rupp, and other lawyers in his firm know about  
10 panels of mediators, people who are available to assist the  
11 parties to reach a resolution. I can't remember whether you  
12 tried that once before or not.

13 MR. RUPP: We did, Your Honor.

14 THE COURT: You did, that's right. But you might want  
15 to try it again. But if you don't, you don't. There's no  
16 penalty. I'm not going to punish anyone if there isn't another  
17 attempt. But I believe it's worth an effort, now that we've  
18 framed the issues a little more narrowly.

19 So Mr. Addington, under these circumstances, I'm not  
20 ordering people to go try to compromise things, but I'm urging  
21 you to be open minded about it. And I'm expecting Mr. Rupp and  
22 the company to do likewise. And they have in other cases, so I  
23 would assume they would be willing to do it here.

24 But my job will be to make the ruling on the amount of  
25 your claim, if you assert it. If you don't -- I'll repeat, if

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1 you don't assert it by the deadline, you're out of luck, unless  
2 you appeal my order. And if you do assert it, then we start  
3 over, and PG&E responds, and then we'll have an evidentiary  
4 hearing where you can prove, to my satisfaction, your  
5 entitlement to an amount of money that you will also have to  
6 establish.

7 Mr. Addington, are you clear on the ruling and where  
8 we're headed?

9 MR. ADDINGTON: My understanding is the ruling is, as  
10 a matter of law, my termination is being disallowed --

11 THE COURT: Yes, sir.

12 MR. ADDINGTON: -- regardless of the circumstance.

13 THE COURT: Yes, sir.

14 MR. ADDINGTON: Okay.

15 THE COURT: Yes, sir.

16 MR. ADDINGTON: I understand.

17 THE COURT: But I'll repeat again, I'm not declaring  
18 that you're not entitled to something.

19 MR. ADDINGTON: Yes, sir.

20 THE COURT: I'm saying you need to show me why you're  
21 entitled to it, and PG&E has to accept the outcome, if that's  
22 my ruling. They have a right to say no, you aren't entitled to  
23 it.

24 MR. ADDINGTON: But this easement is perpetual?

25 THE COURT: So what I'm going to do, I'm not going to

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1 set another hearing date. When I issue an order -- and I'm  
2 going to prepare the order. Mr. Addington, you'll get it in  
3 the mail in order that says, for the following reasons -- and  
4 again, I'm going to be lawyer-like; it's not going to have a  
5 great deal of detail. This colloquy we've had on our record,  
6 plus the briefs on file, are such that if there is an appeal of  
7 my decision, my decision is subject to being reviewed as to  
8 what my reasons are.

9 So for the reasons I have summarized, your assertion  
10 of termination is, in effect, rejected. And therefore, my  
11 ruling, at the moment, is there has not been a termination of  
12 the PG&E easement on your property. And if my decision is  
13 reversed on appeal, then the consequences are what they are.  
14 If my decision is not appealed, or is affirmed on appeal,  
15 either way, then I intend to act on my follow-up instructions,  
16 consistent with what I just said, which I'll repeat in the  
17 order.

18 Mr. Addington has a deadline -- and I'll put it in  
19 there, but it's going to be roughly sixty days from the time I  
20 sign the order -- to amend, sixty days for PG&E to respond, and  
21 a hearing date that will be reflected in the order.

22 Thank you for your time, gentlemen. I appreciate the  
23 time and effort. And I will -- how can I say this? Mr.  
24 Addington, I hope we don't meet again. I hope that there is a  
25 consensual resolution. But if there is not, then I will see

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1 you at some future date when I have to deal with this again.  
2 And with that, I'm going to conclude the hearing. Thank you  
3 all for your time.

4 MR. RUPP: Thank you, Your Honor.

5 MR. ADDINGTON: Thank you.

6 (Whereupon these proceedings were concluded at 10:58 AM)

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## C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

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